

1 M. ANDREW WOODMANSEE (CA SBN 201780)  
MAWoodmansee@mofo.com  
2 JAMES J. CEKOLA (CA SBN 259443)  
JCekola@mofo.com  
3 CHIKA ARAKAWA (CA SBN 292536)  
CArakawa@mofo.com  
4 MORRISON & FOERSTER LLP  
12531 High Bluff Drive  
5 San Diego, California 92130-2040  
Telephone: 858.720.5100  
6 Facsimile: 858.720.5125

7 Attorneys for Plaintiff  
8 DEXCOM, INC.

9  
10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 DEXCOM, INC.,

13 Plaintiff,

14 v.

15 MY HEALTH, INC.,

16 Defendant.  
17

Case No. '15CV0932 AJB BLM

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

**JURY TRIAL DEMANDED**

18  
19 Plaintiff DexCom, Inc. ("DexCom") hereby files this Complaint for  
20 Declaratory Judgment against My Health, Inc. ("My Health") and alleges as  
21 follows:

22 **NATURE OF THE ACTION**

23 1. This is an action for declaratory judgment of non-infringement of  
24 United States Patent No. 6,612,985 ("the '985 patent") pursuant to the Declaratory  
25 Judgment Act, 28 U.S.C. §§ 2201-02, and the Patent Laws of the United States, 35  
26 U.S.C. §§ 1 *et seq.*, and for such other relief as the Court deems just and proper.  
27  
28

**PARTIES**

2. DexCom is a Delaware corporation with its principal place of business in San Diego, California.

3. Upon information and belief, My Health is a Delaware corporation with offices in Plano, Texas. Upon information and belief, My Health has an agent for service of process in Carlsbad, California.

**JURISDICTION AND VENUE**

4. This is an action under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, against My Health for a declaration that pursuant to the patent laws of the United States, 35 U.S.C. § 1 et seq., the claims of the '985 patent are not infringed by DexCom. Jurisdiction as to these claims is conferred on this Court by 28 U.S.C. §§ 1331 and 1338 (a).

5. Upon information and belief, this Court has personal jurisdiction over My Health by virtue of its contacts with this forum. Upon information and belief, Vincent F. Aiello is My Health's agent for service of process with an address in Carlsbad, California. Upon information and belief, Vincent F. Aiello is My Health's Chief Financial Officer and General Counsel, has a legal office at 5620 Paseo Del Norte in Carlsbad, California, and is a current resident of Carlsbad, California. Upon information and belief, Vincent Aiello is one of two officers at My Health, and conducts My Health's business, licensing and litigation activities from Carlsbad, California. My Health has attempted to license the '985 patent in this District.

6. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b). My Health does business in this District and a substantial part of DexCom's claims arise in this District. Among other things, My Health has attempted to license the '985 patent in this District.

## **THE PATENT-IN-SUIT**

7. The United States Patent and Trademark Office (“PTO”) issued the ’985 patent, entitled Method and System for Monitoring and Treating a Patient, on September 2, 2003. A true and correct copy of the ’985 patent is attached as Exhibit A.

8. The named inventors of the ’985 patent are Michael E. Eiffert and Lisa C. Schwartz. The named assignee of the ’985 patent is the University of Rochester.

9. Upon information and belief, the current assignee of the ’985 patent is My Health.

## **LITIGATION ACTIVITY INVOLVING THE ’985 PATENT**

10. Upon information and belief, My Health has brought suit against at least twenty-four different parties for patent infringement of the ’985 patent between 2012 and the present. These cases include: *My Health, Inc. v. ZeOmega, Inc.*, No. 2:12-CV-00251 (E.D. Tex.); *My Health, Inc. v. CardioCom, LLC*, No. 2:13-CV-00136 (E.D. Tex.); *My Health, Inc. v. Click4Care, Inc.*, No. 2:13-CV-00137 (E.D. Tex.); *My Health, Inc. v. GenerationOne, Inc.*, No. 2:13-CV-00138 (E.D. Tex.); *My Health, Inc. v. Honeywell HomMed, LLC*, No. 2:13-CV-00139 (E.D. Tex.); *My Health, Inc. v. Philips Medical Systems N. Am., Inc.*, No. 2:13-CV-00140 (E.D. Tex.); *My Health, Inc. v. Alere, Inc.*, No. 2:14-CV-00652 (E.D. Tex.); *My Health, Inc. v. BodyMedia, Inc.*, No. 2:14-CV-00653 (E.D. Tex.); *My Health, Inc. v. Cardiomedix, Inc.*, No. 2:14-CV-00654 (E.D. Tex.); *My Health, Inc. v. Confidant Hawaii, LLC*, No. 2:14-CV-00655 (E.D. Tex.); *My Health, Inc. v. Entra Health Systems, LLC*, No. 2:14-CV-00657 (E.D. Tex.); *My Health, Inc. v. Healthrageous, Inc.*, No. 2:14-CV-00658 (E.D. Tex.); *My Health, Inc. v. Medisana AG*, No. 2:14-CV-00659 (E.D. Tex.); *My Health, Inc. v. Nonin Medical, Inc.*, No. 2:14-CV-00660 (E.D. Tex.); *My Health, Inc. v. Pleio Health Support Systems, Inc.*, No. 2:14-CV-00661 (E.D. Tex.); *My Health, Inc. v. Robert Bosch Healthcare Systems, Inc.*, No. 2:14-CV-00662 (E.D. Tex.); *My Health, Inc. v. Sotera Wireless*,

1 *Inc.*, No. 2:14-CV-00663 (E.D. Tex.); *My Health, Inc. v. Vivify Health, Inc.*, No.  
 2 2:14-CV-00664 (E.D. Tex.); *My Health, Inc. v. Biotronik, Inc.*, No. 2:14-CV-00680  
 3 (E.D. Tex.); *My Health, Inc. v. CardioNet, Inc.*, No. 2:14-CV-00681 (E.D. Tex.);  
 4 *My Health, Inc. v. Health Dialog, Inc.*, No. 2:14-CV-00682 (E.D. Tex.); *My Health,*  
 5 *Inc. v. LifeScan, Inc.*, No. 2:14-CV-00683 (E.D. Tex.); *My Health, Inc. v. Tandem*  
 6 *Diabetes Care, Inc.*, No. 2:14-CV-00684 (E.D. Tex.); and *My Health, Inc. v.*  
 7 *Tunstall Healthcare USA, Inc.*, No. 2:14-CV-00685 (E.D. Tex.).

8 11. Upon information and belief, seven other companies in the health care  
 9 industry have filed declaratory judgment actions seeking declarations that the '985  
 10 patent is not infringed. These cases include: *Authentidate Holding Corp. v. My*  
 11 *Health, Inc.*, No. 1:13-CV-01616 (D. Del.); *Voxiva, Inc. v. My Health, Inc.*, No.  
 12 1:14-CV-00910 (D. Del.); *Fitango, Inc. v. My Health, Inc.*, No. 1:14-CV-01085 (D.  
 13 Del.); *Allscripts Healthcare Solutions, Inc. v. My Health, Inc.*, No. 1:14-CV-01436  
 14 (D. Del.); *Draeger Medical Systems, Inc. v. My Health, Inc.*, No. 1:15-CV-00248  
 15 (D. Del.); *Medecision, Inc. v. My Health, Inc.*, No. 3:15-CV- 00726 (N.D. Tex.);  
 16 *HealthLoop, Inc. v. My Health, Inc.*, No. 3:15-CV-00671 (N.D. Cal.); and *Kurbo*  
 17 *Health, Inc. v. My Health, Inc.*, No. 5:15-CV-01351 (N.D. Cal.).

18 **MY HEALTH'S THREATS AGAINST DEXCOM INVOLVING THE '985**  
 19 **PATENT**

20 12. On April 16, 2015, the Patent Licensing Alliance, on behalf of My  
 21 Health, sent a letter ("the April 16 Letter") to DexCom asserting that the DexCom  
 22 G4 System employs the technology claimed and disclosed in the '985 patent.

23 13. In the April 16 Letter, My Health stated that it had been a licensee of  
 24 the '985 patent since 2008 and was assigned the patent in 2015. My Health further  
 25 stated it had been enforcing its intellectual property rights in the '985 patent.

26 14. In the April 16 Letter, My Health asserted that DexCom must take a  
 27 license to the '985 patent if it intended to continue to sell its DexCom G4 System  
 28 products, citing 35 U.S.C. § 271.

1           15. By virtue of My Health's correspondence with DexCom and the  
2 numerous patent infringement actions filed by My Health over the past three years,  
3 My Health has created a reasonable apprehension and substantial likelihood that  
4 DexCom will be sued by My Health for infringement of the '985 patent unless  
5 DexCom pays and agrees to enter into a license agreement with My Health.

6           16. An actual and justiciable controversy exists between the parties  
7 concerning DexCom's liability for the alleged infringement of the claims of the  
8 '985 patent. DexCom now seeks a declaratory judgment of non-infringement as to  
9 the claims of the '985 patent.

### 10                                   **FIRST CAUSE OF ACTION**

#### 11                   **(Declaratory Judgment of Non-infringement of the '985 Patent)**

12           17. DexCom repeats and realleges paragraphs 1-16 of this Complaint as if  
13 fully set forth herein.

14           18. My Health claims to be the owner and assignee of all rights, title, and  
15 interest in and under the '985 patent.

16           19. My Health communicated to DexCom that it has the right to assert the  
17 '985 patent, that DexCom's G4 System utilizes the technology claimed and  
18 disclosed in the '985 patent and that DexCom must obtain a license under the '985  
19 patent if it intended to continue to sell its products.

20           20. As a result of My Health's allegations against DexCom and in light of  
21 My Health's litigious history, an actual controversy exists as to the infringement of  
22 the claims of the '985 patent.

23           21. DexCom does not and has not infringed any valid and enforceable  
24 claim of the '985 patent, whether directly or indirectly, by inducement or  
25 contributory infringement, literally or under the doctrine of equivalents.

26           22. A judicial determination of non-infringement is necessary and  
27 appropriate so that DexCom may ascertain its rights regarding the '985 patent.  
28

**PRAYER FOR RELIEF**

WHEREFORE, DexCom prays that the Court enter judgment in its favor and against My Health as follows:

1. A declaration that DexCom does not and has not infringed any valid and enforceable claim of the '985 patent;
2. A determination that this is an exceptional case within the meaning of 35 U.S.C. § 285; and
3. Such further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

DexCom hereby demands a jury trial on all issues so triable

Dated: April 28, 2015

MORRISON & FOERSTER LLP

By: s/M. Andrew Woodmansee  
M. Andrew Woodmansee

Attorneys for Plaintiff  
DEXCOM, INC.